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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the Four Directions Council, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[29 August 1991]

Four Directions Council has the honour to transmit the following information, prepared by Baru Bian and Mutang Urud, on behalf of the Penan people of Malaysia.

1. Sarawak, "The land of the hornbills" is on the north-western coast of Borneo and is geographically the largest state in Malaysia. Its land areas is roughly 124,449 sq km or about 38 per cent of the total land area of Malaysia.

2. In 1989, Sarawak had a population of 1.6 million, and population growth continues at 2.7 per cent per year. The different "races" that now make up Sarawak are as follows (1989):

Natives:	Indigeneous "Dayak" (26 tribes)	43.50%
	Malay and Melanau	26.50%
Non-natives:	Chinese and others	30.00%
Total:		100.00%

81 per cent of the total population lives in the rural areas of the state.

3. The Dayaks have been practising swidden agriculture in the hilly areas. Their traditions and spiritual beliefs are centred on their relationships to the land. Some Dayak communities lived in long houses built close to the rivers on which they depend as means of transport, and a source of fish and water. They also depend to a large extent on hunting and gathering. To the Penans, who are largely nomadic, the forests are their only sanctuary. For all Dayaks, the land, the waters and the forests have provided them with all they need for their existence. This existence is being threatened by logging.

4. From 1965 to 1985, about 30 per cent of Sarawak's forest land had been logged and 60 per cent had been given out as timber concessions. In 1989, the Sarawak Government reported it had extracted 18 million cubic metres of timber. That figure could be doubled as it does not take account of illegal trading.

5. Of Sarawak's total area, 95,232 sq km is covered by forest. Since the early 1980s, Malaysia has been the world's leading exporter of tropical hardwood, accounting for 58 per cent of world tropical log exports and 81 per cent of Asian exports.

6. Before the Second World War, commercial logging took place largely in the swamp forests where it was not a threat to any group. Logging then spread inland, now threatening the Dayaks who are mostly settled in the interior. As early as the 1970s, the Dayaks have organized resistance against logging companies.

7. In most cases, logging covers areas surrounding Dayak long houses or villages, and results in damage to farming land, crops and graveyards. River and streams are polluted, wild animals are driven from hunting grounds, jungle produce like rattan, wild fruits and medicinal plants are destroyed and fish populations are diminishing due to water pollution. The nomadic Penans are most threatened by the destruction of the forest since they totally depend on the forest for their survival. According to government estimates, there are 9,300 Penans and one quarter are still nomadic.

8. Under Section 2 of the Sarawak Land Code (Cap.81) 1958, Native Customary Land has been defined, inter alia, as "(a) land in which native customary rights, whether communal or otherwise, have been created prior to the first day of January 1958 and still subsists as such". Under Section 5 (2) of the Land Code, six methods have been specified by which native customary rights may be acquired:

1. The felling of virgin jungle and the occupation of the land thereby cleared;

2. The planting of land with fruit trees;

3. The occupation or cultivation of land;

4. The use of land for a burial ground or shrine;

5. The use of land of any class for rights of way; or

6. Any other lawful methods.

9. For natives to claim successfully a parcel of land as native customary land, they must prove at least one of the specified methods and that the method or methods was/were in use prior to 1 January 1958. In most cases, the native peoples of Sarawak established their rights much earlier than 1 January 1958, being the natives of the country who occupied and cultivated these areas since time immemorial.

10. In early 1987, natives from the upper Limbang river erected a barricade across a road owned by a timber licensee, alleging trespass and desecration of their ancestral burial grounds. The natives were then charged under section 26 of the Penal Code for causing a public nuisance on a public road. They were all acquitted after the magistrate ruled that a company road was not a public road but a private road. As such, section 268 did not apply.

11. Enraged by the court's decision, the Sarawak State Assembly responded by sponsoring an amendment to the Forest Ordinance (section 90B). Secion 90B makes it an offence for any person to obstruct a road contructed or maintained by a timber licensee. The section further gives any forest officer the power to arrest any offender, without a warrant, and to enlist the assistance of police officers.

12. Section 90B is open to abuse. In many cases it has been invoked to harass and intimidate protesters. At almost every blockade organized by the natives, police personnel were called. In the latest case, warning shots were fired. In another case, a group of 42 natives were charged with illegal occupation of state land for barricading a timber road and were detained for a two-week period; the charge was subsequently withdrawn and they were freed. At the moment, there are about 20 prosecutions, under way in Sarawak against natives for illegally blockading timber roads under section 90B of the Forest Ordinance.

13. Aside from the defence of native people's rights, indiscriminate logging should be restrained for the following reasons:

(a) To protect and preserve the quantity and quality of water in streams and rivers, the only source of water for human consumption and agriculture;

(b) To protect and preserve wild animals, which are an important source of protein for native communities, and other products of the forest which are essential for their basic needs and cash income;

(c) To preserve adequate timber reserves to meet domestic needs, such as the construction of houses, firewood, fences and bridges.

14. Logging has caused major water pollution. There are reports of diarrhoea due to water pollution in areas where recent logging has affected streams. No studies have been done to assess the enviornmental impact of logging in Sarawak, as required under the Environmental Quality Act.

15. The natives affected by logging activities are asking that:

(a) The licensees and logging contractors should respect and recognize their rights over their customary land, as provided for by the laws of the State;

(b) Where there has been damaged done to customary land without consent, the licensees and contractors should compensate the natives;

(c) The terms and conditions of licences should exclude native customary land from the licensed area, and licences should be revoked immediately on the slightest evidence of violation of this condition;

(d) Water catchment areas should not be included in any licence;

(e) The Land Code and the Forest Ordinance of Sarawak should be amended to protect the Penans and other native people, in particular by the repeal of section 90B of the Forest Ordinance;

(f) Native customary land should be surveyed and demarcated; and titles given to the native owners;

(g) Environmental impacts should be studied before the Government issues or renews any timber licences, in accordance with the Environmental Quality Act;

(h) The role of extraction of timber in the state should be reduced immediately, and parties affected by this reduction should be compensated;

(i) The Sarawak State Government must recognize that logging is a serious problem and invite an independent group to assess the damage done so far;

(j) International organizations should consider how they can help resolve the problems caused by deforestation in Sarawak.